

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 IN RE: NEW ENGLAND : MDL No. 2419

5 COMPOUNDING PHARMACY, INC. : Docket No.:

6 PRODUCTS LIABILITY LITIGATION: 1:13-md-2419(RWZ)

7 -----:

8 This document relates to: :

9 :
10 ARNETTA, ET AL v. BOX HILL :11 SURGERY CENTER, LLC, ET AL : DEPOSITION OF
DAVID MAINE, M.D.12 No. 1:14-cv-14022-RWZ :
13 :
14 BOWMAN, ET AL v. BOX HILL :
15 SURGERY CENTER, LLC, ET AL :
16 No. 1:14-cv-14028-RWZ :
17 :
18 DAVIS, ET AL v. BOX HILL :
19 SURGERY CENTER, LLC, ET AL :
20 No. 1:14-cv-14033-RWZ :
21 :

<p style="text-align: right;">Page 2</p> <p>1 DREISCH, ET AL v. BOX HILL : 2 SURGERY CENTER, LLC, ET AL : 3 No. 1:14-cv-14029-RWZ : 4 : 5 FARTHING, ET AL v. BOX HILL : 6 SURGERY CENTER, LLC, ET AL : 7 No. 1:14-cv-14036-RWZ : 8 : 9 KASHI, ET AL v. BOX HILL : 10 SURGERY CENTER, LLC, ET AL : 11 No. 1:14-cv-14026-RWZ : 12 : 13 TORBECK, ET AL v. BOX HILL : 14 SURGERY CENTER, LLC, ET AL : 15 No. 1:14-cv-14023-RWZ : 16 : 17 HANDY, ET AL v. BOX HILL : 18 SURGERY CENTER, LLC, ET AL : 19 No. 1:14-cv-14019-RWZ : 20 ----- 21</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: 2 ON BEHALF OF PLAINTIFFS ARNETTA, BOWMAN, 3 DAVIS, DREISCH, FARTHING, KASHI, TORBECK 4 AND HANDY: 5 Law Offices of Peter G. Angelos, P.C. 6 JAY D. MILLER, ESQUIRE. 7 jmill@lawpga.com. 8 SHARON L. HOUSTON, ESQUIRE. 9 shouston@lawpga.com. 10 100 North Charles Street. 11 Baltimore, Maryland 21201. 12 (410) 649-2000 13 14 ON BEHALF OF PLAINTIFF ROZEK: 15 Cohen, Placitella & Roth, P.C. 16 MCHAELE COREN, ESQUIRE. 17 mcoren@cprlaw.com. 18 2001 Market Street. 19 Suite 2900. 20 Philadelphia, Pennsylvania 19103. 21 (215) 567-3500</p>
<p style="text-align: right;">Page 3</p> <p>1 Deposition of DAVID MAINE, M.D., was 2 taken on Wednesday, March 8, 2017, commencing at 3 4:36 p.m., at Mercy Medical Center, 435 St. Paul 4 Place, 4th Floor, Baltimore, Maryland, before 5 MICHELE D. LAMBIE, Notary Public. 6 ----- 7 8 9 10 11 ALSO PRESENT; Ashley E. Geno, Esquire 12 (via telephone) 13 Reported By: 14 Michele D. Lambie, CSR-RPR 15 16 17 18 19 20 21</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES CONTINUED: 2 ON BEHALF OF THE DEFENDANTS: 3 Pessin Katz Law, P.A. 4 GREGORY K. KIRBY, ESQUIRE. 5 gkirby@plaw.com. 6 901 Dulaney Valley Road. 7 Suite 400. 8 Towson, Maryland 21204. 9 (410) 938-8800 10 11 12 13 14 15 16 17 18 19 20 21</p>

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<p>1 PROCEEDINGS</p> <p>2 DAVID MAINE, M.D.,</p> <p>3 the Deponent, called for examination by the</p> <p>4 Plaintiffs, being first duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth,</p> <p>6 testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. MILLER:</p> <p>9 Q. Full name and address for the record.</p> <p>10 A. David Maine. Work address, I assume?</p> <p>11 345 St. Paul Place, Baltimore, Maryland 21202.</p> <p>12 Q. Dr. Maine, as you know, my name is Jay</p> <p>13 Miller with the Law Offices of Peter Angelos, and</p> <p>14 we're here today to take your deposition on issues</p> <p>15 relating to a number of cases.</p> <p>16 I've been provided with your CV and a</p> <p>17 copy of your report. I'd like to go through that.</p> <p>18 You've had your deposition taken before?</p> <p>19 A. Yes.</p> <p>20 Q. You were kind enough to give us a list of</p> <p>21 cases you have been involved with, so just a couple</p>	<p>1 center at all or any division of that sort, and so</p> <p>2 I started it with the support, obviously, of the</p> <p>3 institution.</p> <p>4 Q. Now, were you a fellow under Dr. Cohen?</p> <p>5 A. I was.</p> <p>6 Q. Are you aware that he's also designated</p> <p>7 as an expert in this case?</p> <p>8 A. I am.</p> <p>9 Q. Have you had a chance to review any of</p> <p>10 his testimony?</p> <p>11 A. I read through about, I think, the first</p> <p>12 40 to 49 pages yesterday, and then I zonked out.</p> <p>13 You guys talked for a while.</p> <p>14 Q. The same thing happened to Mike.</p> <p>15 MR. COREN: Yeah. It's a page turner,</p> <p>16 right?</p> <p>17 MR. KIRBY: Keep reading the same page</p> <p>18 over and over.</p> <p>19 BY MR. MILLER:</p> <p>20 Q. So you read some of it?</p> <p>21 A. Yes.</p>

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<p>1 context, but it seems like a reasonable statement;</p> <p>2 yes.</p> <p>3 Q. Would you agree because of your unbiased</p> <p>4 nature if you read something or you learn something</p> <p>5 throughout this case, throughout this deposition or</p> <p>6 whenever, if it's contrary to the position that you</p> <p>7 have already indicated, because you're unbiased and</p> <p>8 you want to comply with the guidelines, you will</p> <p>9 tell the attorney and indicate that, Hey, my</p> <p>10 opinion is not what I thought it was?</p> <p>11 A. Sure. I mean, I think, you know, when I,</p> <p>12 when I take a case, it's fairly clear with counsel</p> <p>13 that my, my opinion is obviously always subject to</p> <p>14 change if there's new information provided to me in</p> <p>15 respect to a case, particularly as it pertains to</p> <p>16 injuries where sometimes I don't get all of the</p> <p>17 information at the time of my clinical exam or so</p> <p>18 on and so forth, so.</p> <p>19 Q. Now, you understand that I have not had a</p> <p>20 chance to talk to you about this case before. So</p> <p>21 we have been provided what you have signed as to be</p>	<p>1 MR. MILLER: I'm not asking about the</p> <p>2 drafting, just his final report.</p> <p>3 BY MR. MILLER:</p> <p>4 Q. This final version, you didn't type any</p> <p>5 of this?</p> <p>6 A. If I had to type this, I would still be</p> <p>7 typing right now.</p> <p>8 MR. COREN: Objection. Just so we're</p> <p>9 clear on the record, could we give it an exhibit</p> <p>10 number?</p> <p>11 MR. MILLER: Sure.</p> <p>12 (Whereupon, Maine Deposition Exhibit</p> <p>13 Number 1626-1, Standards of Professionalism: Expert</p> <p>14 Witness Guidelines, marked for identification.)</p> <p>15 (Whereupon, Maine Deposition Exhibit</p> <p>16 Number 1626-2, Report, marked for identification.)</p> <p>17 BY MR. MILLER:</p> <p>18 Q. You can use yours. I just want to sit</p> <p>19 this here.</p> <p>20 A. That's fine.</p> <p>21 Q. So the 23 pages was arrived at to a</p>
Page 23	Page 25
<p>1 your report in this case. I believe your signature</p> <p>2 appears on page 23?</p> <p>3 A. Correct.</p> <p>4 Q. It shows me you signed it in October of</p> <p>5 2016?</p> <p>6 A. Um-hum.</p> <p>7 Q. And you -- how did you prepare this</p> <p>8 report?</p> <p>9 A. So I first reviewed two giant boxes of</p> <p>10 information that made my head want to blow up, and</p> <p>11 then I spent some time synthesizing it. And then I</p> <p>12 had numerous telephone conversations with</p> <p>13 Mr. Kirby, and I think it was solely Mr. Kirby,</p> <p>14 where he asked me questions, and I articulated my</p> <p>15 opinion. We would -- he would -- that's</p> <p>16 essentially how I did it.</p> <p>17 Q. Did you type the pages?</p> <p>18 A. No.</p> <p>19 MR. KIRBY: I'm just going to object</p> <p>20 based on protected information of drafting in the</p> <p>21 process which I consider privileged.</p>	<p>1 series of questions and answers with Mr. Kirby, and</p> <p>2 then ultimately after a number of conversations</p> <p>3 just with Mr. Kirby, you telling him information,</p> <p>4 he put together a typed 23-page report. You</p> <p>5 received this, and I take it you reviewed it before</p> <p>6 you signed it?</p> <p>7 A. Of course, yes. I, I made some changes</p> <p>8 here and there, but that's correct.</p> <p>9 Q. And then so this 23-page report contains</p> <p>10 the entirety of your opinions in this case?</p> <p>11 A. It's a good summary.</p> <p>12 Q. Do you have any changes you want to make</p> <p>13 before we move on?</p> <p>14 MR. KIRBY: Objection to form and the</p> <p>15 broad nature of the question. You can answer.</p> <p>16 THE WITNESS: Not specifically.</p> <p>17 BY MR. MILLER:</p> <p>18 Q. Have you reviewed any of the reports that</p> <p>19 Dr. Cohen filed in this case?</p> <p>20 A. No.</p> <p>21 Q. How about the report of Dr. Larkin?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. No.</p> <p>2 Q. Have you seen the report of</p> <p>3 Dr. Manchikanti?</p> <p>4 A. No. I read his deposition.</p> <p>5 Q. Have you read your report prior to today?</p> <p>6 A. I read it, I think, in September of 2016</p> <p>7 and maybe in August of 2016 when it was being</p> <p>8 prepared.</p> <p>9 Q. Is it fair to say at the time you read</p> <p>10 it, when you signed it, you were confident that</p> <p>11 your opinions were truthful, unbiased and</p> <p>12 scientifically sound?</p> <p>13 A. These are my opinions.</p> <p>14 Q. Well, they're obviously truthful?</p> <p>15 A. So they're truthful, yes.</p> <p>16 Q. And unbiased?</p> <p>17 A. Yes, they're my opinions. These are my</p> <p>18 opinions.</p> <p>19 Q. Okay. No other doctor's? They're yours?</p> <p>20 A. No. I mean, they're only biased by my</p> <p>21 experience in clinical practice.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. -- and to help with administrative</p> <p>2 functions, such as addressing inventory and</p> <p>3 ensuring that medications and other supplies are</p> <p>4 fully stocked. Where did you get that information?</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Do you have some specific recollection of</p> <p>7 reading something that led you to the conclusion</p> <p>8 that Mr. Vickers helps with addressing inventory</p> <p>9 and ensuring that stock is kept up to date?</p> <p>10 A. It might, it might have been</p> <p>11 Dr. Bhambhani's deposition. I just don't recall</p> <p>12 specifically.</p> <p>13 Q. All right. The next paragraph,</p> <p>14 Dr. Maine, under B, Medication Purchasing, the</p> <p>15 fourth line down, it says, She -- you're referring</p> <p>16 to Dr. Bhambhani -- continued to use it -- and</p> <p>17 we're talking about MPA, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Continued to use it out of a concern for</p> <p>20 potential adverse events due to preservatives. I</p> <p>21 want to stop right there.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. You wouldn't copy anybody else's opinion.</p> <p>2 These are your own personal opinions that you</p> <p>3 reached, right?</p> <p>4 MR. KIRBY: Object to the form.</p> <p>5 THE WITNESS: Yeah. These are, these are</p> <p>6 my opinions. Now, it's not to say that others</p> <p>7 cannot have the same opinions, but they're my</p> <p>8 opinions.</p> <p>9 BY MR. MILLER:</p> <p>10 Q. If you could turn to page 3, at the top</p> <p>11 you say that these opinions contained herein are</p> <p>12 generally relied on your education, training,</p> <p>13 experience and then the materials you reviewed,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Down at the bottom of page 3 where your</p> <p>17 report states that, Box Hill Surgery Center has a</p> <p>18 nurse administrator, Andrew Vickers, and you say,</p> <p>19 Mr. Vickers works part time with Dr. Bhambhani to</p> <p>20 assist her when performing pain injections --</p> <p>21 A. Um-hum.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Sure.</p> <p>2 Q. What specific facts did you rely on to</p> <p>3 conclude that Dr. Bhambhani used MPA because she</p> <p>4 was concerned about adverse events due to</p> <p>5 preservatives?</p> <p>6 A. Well, Dr. Bhambhani's deposition spoke to</p> <p>7 that, so that was the primary part of the medical</p> <p>8 record that I used to garner that, that opinion.</p> <p>9 I think she spoke to specifically that</p> <p>10 she had worked with another provider who had used</p> <p>11 NECC. I think she might have been</p> <p>12 working -- she has worked for several years using</p> <p>13 it uneventfully.</p> <p>14 She had some negative experiences with</p> <p>15 other steroids, and I think it was shaping those</p> <p>16 experiences, both positive and negative, that</p> <p>17 ultimately resulted in her reason of using the</p> <p>18 preservative-free MPA, that she had a very positive</p> <p>19 experience with.</p> <p>20 Q. So it's your belief that Dr. Bhambhani</p> <p>21 specifically used preservative free or the MPA</p>

<p style="text-align: right;">Page 46</p> <p>1 A. I mean, I think that's reasonable. She</p> <p>2 used it thousands of times, had no problems and</p> <p>3 decided to use it. Just like I used, what I have</p> <p>4 used at Hopkins, I decided to use it. It's kind of</p> <p>5 the same logic.</p> <p>6 Q. Her prior boss used it, so she's going to</p> <p>7 use it?</p> <p>8 MR. KIRBY: Objection to form.</p> <p>9 THE WITNESS: I think, I think we're</p> <p>10 saying the same thing.</p> <p>11 BY MR. MILLER:</p> <p>12 Q. Right.</p> <p>13 A. She had a good experience. She used it</p> <p>14 at her prior employer, and she decided to use it in</p> <p>15 her solo practice.</p> <p>16 Q. And despite the way this is worded, I</p> <p>17 mean, really isn't that the extent of her basis for</p> <p>18 using it --</p> <p>19 MR. KIRBY: Objection to form.</p> <p>20 BY MR. MILLER:</p> <p>21 Q. -- the lack of any prior problems?</p>	<p style="text-align: right;">Page 48</p> <p>1 appearing on the schedule or sometimes the schedule</p> <p>2 itself. NECC led Box Hill to believe that doing it</p> <p>3 that way would comply with NECC's requirements.</p> <p>4 Do you believe that at the time</p> <p>5 Dr. Bhambhani was doing this in 2012 that that way</p> <p>6 of ordering prescription medication from a</p> <p>7 compounding lab complied with Massachusetts's law</p> <p>8 in NECC's country and Maryland law?</p> <p>9 MR. KIRBY: Objection to form and</p> <p>10 foundation.</p> <p>11 BY MR. MILLER:</p> <p>12 Q. Sending a schedule just showing patient</p> <p>13 name and ordering medication?</p> <p>14 MR. KIRBY: Objection to form. He's not</p> <p>15 going to be a regulatory expert. Go ahead.</p> <p>16 THE WITNESS: So I'll say this: I mean,</p> <p>17 I can't speak to the Massachusetts's law. I can</p> <p>18 tell you that it was certainly standard practice at</p> <p>19 the time.</p> <p>20 BY MR. MILLER:</p> <p>21 Q. You now know that that's not, it wasn't</p>
<p style="text-align: right;">Page 47</p> <p>1 A. When you say it like that, it means that</p> <p>2 it -- it comes off as you're saying that that is</p> <p>3 not a very reasonable reason.</p> <p>4 Q. But that's my job. You can still agree</p> <p>5 with it.</p> <p>6 A. I understand, but, actually, I think that</p> <p>7 is a, that is perfectly sufficient and reasonable</p> <p>8 to make a decision.</p> <p>9 Patients have a good therapeutic effect,</p> <p>10 you have a good experience, no negative effects.</p> <p>11 Negative effects shape what we do, just like this</p> <p>12 is shaping what we do, so I -- yes.</p> <p>13 Q. Okay. Fair enough. Let's go down a</p> <p>14 quarter of the way on that page, and then it says,</p> <p>15 NECC was Box Hill's sole supplier of MPA prior to</p> <p>16 the issues at hand.</p> <p>17 And then you say, At some point in 2012,</p> <p>18 Box Hill was informed by NECC that NECC needed a</p> <p>19 list of patient names from Box Hill for patients</p> <p>20 who had or would be receiving a steroid injection.</p> <p>21 Dr. Bhambhani complied by sending a list of names</p>	<p style="text-align: right;">Page 49</p> <p>1 appropriate, don't you?</p> <p>2 MR. KIRBY: Objection to form.</p> <p>3 THE WITNESS: Well, I mean, I would say</p> <p>4 certainly now that it is not appropriate, but at</p> <p>5 the time, it was absolutely standard practice.</p> <p>6 And, you know, I'm -- whether it's appropriate or</p> <p>7 not is a different question, but --</p> <p>8 BY MR. MILLER:</p> <p>9 Q. I didn't mean to cut you off by sighing</p> <p>10 like that, so you go ahead if you want to finish.</p> <p>11 A. -- but at the time, that was standard</p> <p>12 practice in terms of ordering medications.</p> <p>13 Q. When you say standard practice, are you</p> <p>14 referring to doctors that you work with?</p> <p>15 A. Well, like I said, I am a partner in a</p> <p>16 surgery center, and we use a compounding pharmacy</p> <p>17 there. Some providers prefer MPA. It's used for</p> <p>18 eye cases. I think it's used for some other</p> <p>19 peripheral cases that I'm not involved in, and that</p> <p>20 was common, commonplace to order it that way.</p> <p>21 You could order three, four, five vials</p>

<p style="text-align: right;">Page 50</p> <p>1 under a single patient's name. You would get the</p> <p>2 vials, and then when you administered the</p> <p>3 medication, even though that medication may have</p> <p>4 been going to a different patient, you would write</p> <p>5 the lot number and record it, obviously, for that</p> <p>6 patient. But in terms of ordering, this is what</p> <p>7 the pharmacies expressed was necessary, and it was</p> <p>8 done that way, so I considered it standard</p> <p>9 practice.</p> <p>10 Q. Since the NECC meningitis outbreak, is it</p> <p>11 fair to say you've learned that that was, it may</p> <p>12 have been standard practice, but it certainly did</p> <p>13 not comply with the law?</p> <p>14 MR. KIRBY: Objection to form. Again,</p> <p>15 he's not a regulatory expert.</p> <p>16 BY MR. MILLER:</p> <p>17 Q. You can answer.</p> <p>18 A. I mean, I think our knowledge and</p> <p>19 understanding of these issues has certainly come to</p> <p>20 the forefront after the NECC outbreak, so I think</p> <p>21 our understanding of that is much clearer, and, and</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. So your opinion that she complied with</p> <p>2 the standard of care in 2012 by ordering it the way</p> <p>3 she did by using the schedule is based on your</p> <p>4 belief that the standard of care was what everybody</p> <p>5 was doing --</p> <p>6 A. Well --</p> <p>7 Q. -- regardless of what the law said?</p> <p>8 MR. KIRBY: Objection to form and</p> <p>9 foundation.</p> <p>10 THE WITNESS: Well, I mean, when</p> <p>11 I -- when I say the word standard practice,</p> <p>12 standard practice or standard of care, I'm thinking</p> <p>13 what any reasonably appropriate physician would do</p> <p>14 in the same situation --</p> <p>15 BY MR. MILLER:</p> <p>16 Q. Understood.</p> <p>17 A. -- and that's what was being done. I</p> <p>18 remember talking about it at conferences. Everyone</p> <p>19 was starting up their practices. People were</p> <p>20 talking about where they were ordering medications</p> <p>21 and how they were doing it, so this was</p>
<p style="text-align: right;">Page 51</p> <p>1 I will say that.</p> <p>2 Q. What's your understanding now of what the</p> <p>3 law requires when ordering a prescription --</p> <p>4 MR. KIRBY: Objection to form.</p> <p>5 BY MR. MILLER:</p> <p>6 Q. -- from a compounding pharmacy?</p> <p>7 A. I think you need -- I think you need a</p> <p>8 prescription or a specific prescription for a</p> <p>9 patient for a specific quantity for that patient.</p> <p>10 The details in terms of ordering and certifications</p> <p>11 I can't speak to.</p> <p>12 Q. And you learned that that's not a new</p> <p>13 law. That was in existence in 2012?</p> <p>14 MR. KIRBY: Objection to form.</p> <p>15 THE WITNESS: Again, I wasn't familiar</p> <p>16 with the law in 2012 --</p> <p>17 BY MR. MILLER:</p> <p>18 Q. I understand.</p> <p>19 A. -- or 2010. I'm, I'm really marginally</p> <p>20 familiar with it now, other than there seems to be</p> <p>21 quite a bit more regulatory oversight.</p>	<p style="text-align: right;">Page 53</p> <p>1 commonplace.</p> <p>2 You know, I mean, I, I can't speak to</p> <p>3 what the pharmacy regulations were. I mean, that's</p> <p>4 on pharmacies, but, you know, for physicians, that</p> <p>5 was commonplace, and I, I would call standard</p> <p>6 practice.</p> <p>7 Q. I'll ask you to turn to page 5 for me.</p> <p>8 When you make a statement at the top like this</p> <p>9 where it says, Each of the patients in the instant</p> <p>10 actions treated by Bhambhani presented, in most</p> <p>11 cases, as a referral from another physician, what's</p> <p>12 your source of that? Where do you get that</p> <p>13 information?</p> <p>14 A. I don't recall specifically, but</p> <p>15 Dr. Bhambhani implied in her deposition that she</p> <p>16 used these medications for treating patients with</p> <p>17 back, neck pain, so on and so forth, so.</p> <p>18 Q. Do you think it's fair for me to make the</p> <p>19 assumption that a statement like that where you</p> <p>20 really don't recall the source is likely a</p> <p>21 statement made by the attorney in the report, that</p>